

### **REMARKS/ARGUMENTS**

This reply is in response to the Final Office Action dated November 15, 2007. Claims 1 and 3-20 are pending in the application and stand rejected. Applicants have cancelled claims 10-11 and 19-20, without prejudice, to place the application in condition for allowance and/or reduce issues for appeal. Applicants have also amended claims 1, 12, and 15, and added new claims 21-25 to describe additional aspects of the invention. Specifically, Applicants have cancelled claim 11 without prejudice and amended claim 1 to include the cancelled subject matter of claim 11. Applicants also amended claims 12 and 15 to change dependency to claim 1. As such, Applicants have simply presented the subject matter of original claim 11 in independent form. Accordingly, no further search or additional consideration above what has already taken place is required by the Examiner. Entry of the foregoing amendment and reconsideration of the claims is respectfully requested.

### **Double Patenting**

Claims 1 and 3-20 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as unpatentable over claims 23-35 and 37-49 of co-pending application Davis et al. (U.S. Patent Publication No. 2005/0064218; hereafter "Davis").

Applicants note that the rejection is provisional pending the allowance of any one claim from the present application or from Davis. As such, the provisional double patenting rejection should be held in abeyance, e.g., until such point as the pending claims are allowable but for such double patenting rejections. At that time, Applicants will, if necessary, submit the appropriate terminal disclaimer(s) to obviate any then-pending double patenting rejections.

Furthermore, Applicants note that the M.P.E.P. instructs the Examiner to withdraw a provisional double patenting rejection in the earlier filed of two pending applications and to allow that earlier filed application to issue as a patent without a terminal disclaimer. See M.P.E.P 804(I)(B)(1). The present application being the earlier filed application of the two. Therefore, withdrawal of the provisional double patenting rejection is respectfully requested.

**35 U.S.C. § 102**

Claims 1, 3-9, 16-17, and 19-20 stand rejected under 35 U.S.C. § 102(a) as being anticipated by Culotta (U.S. Patent No. H2073 H; hereafter “Culotta”).

Applicants have cancelled claims 10-11, and 19-20, without prejudice, and amended claims 1, 12, and 15, obviating the rejection. Specifically, Applicants have cancelled claim 11 without prejudice, and amended claim 1 to include the cancelled subject matter of claim 11, rendering this rejection moot. Withdrawal of the rejection is respectfully requested.

**35 U.S.C. § 103**

Claims 10-15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Culotta. The Examiner states,

Culotta further teaches that the films can have a thickness of 0.5-1.5 mil (*reads upon less than 50 microns*) and that persons skilled in the art could determine which layer to blend in LDPE given that the incorporation of LDPE can lead to desirable film properties. Though Culotta teaches that both layers B and C can comprise a mixture of LDPE and HDPE and that the skin layers can comprise a mixture of mLLDPE with other PE resins including HDPE, Culotta does not specifically teach the weight percentages as instantly claimed and the resulting 1% secant Modulus and gloss properties. However, one having ordinary skill in the art at the time of the invention would have been motivated to utilize routine experimentation to determine the optimum weight percentages of each PE resin to provide the desired film properties such as 1% secant Modulus MD/TD and 20°/60° gloss difference, for a particular end use, wherein Culotta provides sufficient information with respect to the effect of certain PE resins on the film properties.

See, Office Action at pages 3 to 4 (emphasis in original).

Applicants respectfully disagree and traverse the rejection on grounds that Culotta does not teach, show, or suggest the claimed invention. As noted above, Applicants have cancelled claim 11 without prejudice, amended claim 1 to include the cancelled subject matter of claim 11, and amended claims 12 and 15 to change dependency to claim 1. In other words, Applicants have simply presented the subject matter of original claim 11 in independent form. Culotta does not teach, show, or suggest a film comprising an A/B/A structure, wherein the A layers are skin

layers, which may be the same or different, each independently comprising an mLLDPE having a density of between about 0.918 and 0.927 g/cm<sup>3</sup>, and the B layer is a core layer comprising a blend comprising an HDPE and an LDPE, wherein said core layer B comprises 70-80 wt.% LDPE, 30-20 wt.% HDPE, and said skin layers A are each independently selected from a blend comprising 85-95 wt.% mPE, and 15-5 wt.% HDPE, as required in claim 1, as amended, and those dependent therefrom.

The disclosure of Culotta is limited to defect propagation in stretch films. Culotta has nothing to do with shrink films. As is well known in the art, stretch films and shrink films are used for entirely different purposes and possess entirely different processing and mechanical properties. Therefore, the respective films have their own, unique design criteria.

As the title of the current application suggests, the present invention is related to shrink films. Shrink films are applied at room temperature and placed under a heat source to shrink. See, specification at para. [0003]. Suitable performance characteristics of a shrink film include sufficient stiffness allowing the film to be correctly wrapped around the items being packaged, sufficient dimensional shrinkage to ensure a snug fit, and a low enough Coefficient of Friction (COF). Id. Films appropriate for use as collation shrink must have a high thermal shrink force to ensure a tight fit and high tensile strength to withstand handling and abuse during transportation. Id. In addition, the packaging must have excellent display properties including gloss (preferably under different angles to maximize appeal), haze (or "contact clarity") and clarity ("see-through clarity"). Id. at para. [0004]. Finally, the collation shrink film manufacturer wants the properties of a low melt pressure, and the ability to use low motor power, both allowing higher production rates. Id. at para. [0005]. While it is known how to improve many of the above properties individually, currently available structures do not combine all of the properties satisfactorily in a film having sufficiently thin gauge to be commercially attractive. Id. at para. [0006].

Conversely, Culotta discloses stretch films having improved puncture and impact resistance in addition to a minimization in cling force reduction upon stretching, and a minimization in unwind force. See, Culotta at col. 1, ll. 41-60; and at col. 2, ll. 22-50. Such

properties are not the same nor similar to the design parameters of a shrink film, i.e., the claimed invention.

Therefore, one skilled in the art, who is faced with the problems and disadvantages of prior art shrink films, would not be motivated to consult or even attempt to emulate the teachings of a stretch film reference such as Culotta. For at least this reason, withdrawal of the rejection and allowance of the claims is respectfully requested.

Furthermore, Applicants respectfully disagree and traverses the rejection on grounds that the claimed invention provides surprising and unexpected results. More particularly, the claimed film exhibited significantly improved 1% secant Modulus (MD and TD) without loss of clarity or gloss. See, e.g., specification at para. [0060] to [0061]. Such balance, for reasons discussed above, is critical for shrink films. Moreover, the claimed film exhibited superior Elmendorf tear values (higher number being a measure of higher resistance to tearing) and higher thermal force (a measure of holding force when shrink wrapped about collated items), also without loss of clarity or gloss. Id. at para. [0062]. Furthermore, "it is particularly remarkable that Gloss at 20° and 60° are quite similar for examples according to the present invention, particularly with respect to the examples having HDPE both in the core and skins relative to the examples having HDPE in the skin but not the core." Id. at para. [0061].

Being that Culotta is not directed to shrink films nor is Culotta clear or precise as to which layers of its film to include LDPE and/or HDPE, Culotta fails to disclose, with any degree or certainty, the claimed invention. At best, in view Culotta, one skilled in the art might find it obvious to try various combinations of skin components and core components, each having varying densities. Such combinations could be endless. However, this is not the standard of 35 U.S.C. § 103. In re Geiger 2 USPQ2d 1276 (Fed. Cir. 1987) *citing* In re Goodwin, 576 F.2d 375, 377, 198 USPQ 1, 3 (CCPA 1978); In re Antonie , 559 F.2d 618, 195 USPQ 6 (CCPA 1977); In re Tomlinson , 363 F.2d 928, 150 USPQ 623 (CCPA 1966).

Furthermore, the claimed invention provides a shrink film that can exhibit significantly improved 1% secant Modulus (MD and TD) and Elmendorf tear values without loss of clarity or gloss. Such balance of properties is not taught, shown, or suggested by Culotta. For at least these reasons, withdrawal of the rejection and allowance of the claims is respectfully requested.

## **CONCLUSION**

Having demonstrated that the cited references fail to disclose or suggest the invention as claimed, and all other formal issues having now been fully addressed, this application is believed to be in condition for allowance. Accordingly, Applicants request early and favorable reconsideration in the form of a Notice of Allowance.

If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated, since this should expedite the prosecution of the application for all concerned.

If necessary to affect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to affect a timely response. Please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1712 (Docket #: 2003B101).

Respectfully submitted,

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/Frank E. Reid/  
Attorney for Applicants  
Registration No. 37,918

Post Office Address (to which correspondence is to be sent):  
ExxonMobil Chemical Company  
Law Technology  
P.O. Box 2149  
Baytown, Texas 77522-2149  
Telephone No. (281) 834-1743  
Facsimile No. (281) 834-2495